

JENNER & BLOCK LLP

Reid J. Schar (*pro hac vice*)

RSchar@jenner.com

353 N. Clark Street

Chicago, IL 60654-3456

Telephone: +1 312 222 9350

Facsimile: +1 312 527 0484

CLARENCE DYER & COHEN LLP

Kate Dyer (Bar No. 171891)

kdyer@clarencedyer.com

899 Ellis Street

San Francisco, CA 94109-7807

Telephone: +1 415 749 1800

Facsimile: +1 415 749 1694

CRAVATH, SWAINE & MOORE LLP

Kevin J. Orsini (*pro hac vice*)

korsini@cravath.com

825 Eighth Avenue

New York, NY 10019

Telephone: +1 212 474 1000

Facsimile: +1 212 474 3700

Attorneys for Defendant PACIFIC GAS AND ELECTRIC  
COMPANY

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

PACIFIC GAS AND ELECTRIC COMPANY,

Defendant.

Case No. 14-CR-00175-WHA

**SUBMISSION IN RESPONSE TO  
ORDER RE PRIVILEGE LOG**

Judge: Hon. William Alsup

1 Defendant Pacific Gas and Electric Company (“PG&E”) respectfully submits this  
2 response to the Court’s November 30, 2021 Order re Privilege Log (Dkt. 1528). The Court has  
3 requested that PG&E submit for *ex parte* review five documents listed on the revised privilege log  
4 PG&E submitted on November 30, 2021 (the “revised privilege log”). PG&E has included  
5 unredacted versions of those five documents on a hard drive that is being delivered to the Court  
6 today, along with documents from which PG&E has withdrawn some or all of its original privilege  
7 assertions (*see* Dkt. 1525).

8 As described in earlier filings, PG&E produced any document, including email  
9 communications, created on July 13 or 14, 2021 that hit on search terms among approximately 80  
10 custodians. Given the nature of email communications, which are frequently forwarded and  
11 ultimately responded to by several individuals, many of the entries on PG&E’s revised privilege log  
12 contain substantially similar information. In creating its privilege log, PG&E identified each  
13 document by listing the sender and recipient(s) of the last email in a chain (*i.e.*, the top email on a  
14 document), although the information over which PG&E is claiming privilege may be reflected earlier  
15 in the chain of that email correspondence. While there are 19 documents on PG&E’s revised  
16 privilege log, those documents relate to only three distinct sets of redacted material.<sup>1</sup> PG&E is  
17 supplementing its privilege log to reflect the sender and recipient(s) of the redacted email in addition  
18 to the sender and recipient(s) of the last email in the correspondence. PG&E is providing the  
19 supplemental log as Exhibit A.

20 The five documents that the Court requested to review *ex parte*, along with eight other  
21 documents on PG&E’s revised privilege log, all relate to the same email chain. PG&E redacted these  
22 three emails from that chain across all 13 documents, as they reflect communications between PG&E  
23 personnel and PG&E’s General Counsel. Specifically, PG&E redacted a July 14, 2021 email from  
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25 <sup>1</sup> PG&E inadvertently included on its initial privilege log (Dkt. 1525, Ex. A) two documents for  
26 which it intended to withdraw its redactions: PGE-DIXIE-NDCAL-000020100 and PGE-DIXIE-  
27 NDCAL-000021501. PG&E has removed those entries from the supplemental log attached as  
28 Exhibit A.

1 Marlene Santos, Executive Vice President and Chief Customer Officer, to several PG&E executives,  
 2 including John Simon, PG&E's General Counsel. Ms. Santos raises a question about outreach to an  
 3 external party. Mr. Simon responds to Ms. Santos's question, and requests a current update on the  
 4 facts to inform the outreach. [REDACTED], [REDACTED], responds  
 5 to Mr. Simon with a report of the latest facts known by PG&E concerning the fire.

6 To be clear, PG&E does not claim privilege over the underlying facts described to  
 7 Mr. Simon and indeed has produced numerous documents, affidavits and other materials to the Court  
 8 that describe the facts known to PG&E regarding the fire at various points in time. Because,  
 9 however, [REDACTED] communication was in direct response to a request by PG&E's General  
 10 Counsel to assist him in advancing the Company's legal strategy, PG&E is claiming privilege over  
 11 this communication. *See Kintera, Inc. v. Convio, Inc.*, 219 F.R.D. 503, 514 (S.D. Cal. 2003); *Clark v.*  
 12 *Superior Court*, 196 Cal. App. 4th 37, 50-52 (2011).

13 As noted above, there are eight other documents on PG&E's revised privilege log that  
 14 redact these same three communications from the email chain. Those documents are: PGE-DIXIE-  
 15 NDCAL-000019769, PGE-DIXIE-NDCAL-000019818, PGE-DIXIE-NDCAL-000019705, PGE-  
 16 DIXIE-NDCAL-000019857, PGE-DIXIE-NDCAL-000019903, PGE-DIXIE-NDCAL-000019738,  
 17 PGE-DIXIE-NDCAL-000019798, and PGE-DIXIE-NDCAL-000020107. In two of these documents,  
 18 PGE-DIXIE-NDCAL-000019738 and PGE-DIXIE-NDCAL-000019798, PG&E also redacted  
 19 communications between [REDACTED], internal PG&E counsel, and [REDACTED], in which [REDACTED]  
 20 advises [REDACTED] with respect to the appropriate recipients of future updates concerning the  
 21 Dixie Fire.

22 The remaining six entries on the revised privilege log reflect two sets of redacted  
 23 material. Five entries correspond to a single redaction by PG&E of a two sentence email from [REDACTED]  
 24 [REDACTED] to other internal PG&E counsel discussing the appropriate allocation of responsibilities for the  
 25 wildfire response between members of PG&E's Law Department. PGE-DIXIE-NDCAL-000020397;  
 26 PGE-DIXIE-NDCAL-000020453; PGE-DIXIE-NDCAL-000020434; PGE-DIXIE-NDCAL-  
 27

000020449; PGE-DIXIE-NDCAL-000020455. The final entry corresponds to an email chain in which [REDACTED], [REDACTED] and [REDACTED], all of whom are internal PG&E counsel, are providing legal advice in connection with draft talking points concerning PG&E's response to the Dixie Fire. PGE-DIXIE-NDCAL-000021160.

Dated: December 3, 2021

Respectfully Submitted,

JENNER & BLOCK LLP

By: /s/ Reid J. Schar  
Reid J. Schar (*pro hac vice*)

CRAVATH, SWAINE & MOORE LLP

By: /s/ Kevin J. Orsini  
Kevin J. Orsini (*pro hac vice*)

CLARENCE DYER & COHEN LLP

By: /s/ Kate Dyer  
Kate Dyer (Bar No. 171891)

Attorneys for Defendant PACIFIC GAS AND  
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